

**REMARKS****I. General**

The following items were raised in the present Office Action:

- The Examiner has objected to the drawings and has requested corrected drawings.
- Claims 1, 3-6, and 9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,176,494 to Boucher et al. (hereinafter *Boucher*).
- Claims 2 and 10 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Boucher*.
- Claim 7 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Boucher* in view of GB 2193621A to Mazura (hereinafter *Mazura*).
- Claim 8 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over *Boucher* in view of U.S. Patent No. 3,739,523 to Tuffli (hereinafter *Tuffli*).

Applicants traverse the objection and rejections and request reconsideration in light of the following remarks and amendments. Claim 9 has been amended to include the limitation “wherein said at least a pair of said plant vines are twisted around said flexible material.” Support for this amendment may be found on page 4, lines 13-17 of the specification. No new matter has been entered. Claims 1-10 are pending in this application.

**II. Objections to Drawings**

The Examiner has objected to Figures 1 and 2 because refs. 100 and 200 are designated as growth medium but do not appear to be so on the drawings. Applicants have reviewed the drawings and have determined that the placement of refs. 100 and 200 should be corrected. Appropriate drawings corrections have been made, and replacement drawings are being submitted. Thus, Applicants request that this objection be withdrawn.

**DRAWINGS**

FIGURES 1 and 2 have been amended in accordance with the Examiner's request. A replacement sheet for FIGURES 1 and 2 is attached in the Appendix.

### III. § 102 Rejection

Claims 1, 3-6 and 9 have been rejected under 35 U.S.C. § 102(b) as being anticipated by *Boucher*. Applicants traverse this rejection. It is well settled that to anticipate a claim, the reference must teach every element of the claim. *See* M.P.E.P. § 2131. Moreover, in order for a prior art reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, “[t]he elements must be arranged as required by the claim.” *See* M.P.E.P. § 2131 (citing *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990)). Furthermore, in order for a prior art reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” *See* M.P.E.P. § 2131 (citing *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989)). Applicants respectfully assert that the rejection does not satisfy these requirements.

Claim 1 defines a method for growing plant comprising “twisting at least two plant vines of said plant together to form a growing unit.” *Boucher* does not disclose this limitation. As shown in FIGURE 1, *Boucher* does not disclose twisting at least two plant vines of a plant together. Rather, each plant vine is clasped to the stake by itself, and no plant vines are twisted together to form a growing unit. Thus, *Boucher* does not teach the claimed limitation. Therefore, Applicants respectfully assert that for the above reason claim 1 is patentable over the 35 U.S.C. § 102 rejection of record.

Claim 4 defines a yield maximization system comprising “supports for twisting at least pairs of said vines around individual ones of said supports.” *Boucher* does not disclose this limitation. As shown in FIGURE 1, *Boucher* does not disclose supports for twisting at least pairs of vines around individual ones of said supports. Rather, each plant vine is clasped to a support by itself, and no plant vines are twisted. Thus, *Boucher* does not teach the claimed limitation. Therefore, Applicants respectfully assert that for the above reason claim 4 is patentable over the 35 U.S.C. § 102 rejection of record.

Claim 6 defines a method for growing a plant comprising “twisting at least two plant vines of said plant around a flexible material.” *Boucher* does not disclose this limitation. As shown in FIGURE 1, *Boucher* does not disclose twisting at least two plant vines of a plant around a flexible material. Rather, each plant vine is clasped to a stake by itself, and no plant

vines are twisted. Thus, *Boucher* does not teach the claimed limitation. Therefore, Applicants respectfully assert that for the above reason claim 6 is patentable over the 35 U.S.C. § 102 rejection of record.

Claim 9 defines a method for growing a plant comprising “attaching at least a pair of said plant vines to one another with a flexible material, wherein said at least a pair of said plant vines are twisted together around said flexible material.” *Boucher* does not disclose this limitation. As shown in FIGURE 1, *Boucher* does not disclose twisting at least a pair of plant vines around a flexible material. Rather, each plant vine is clasped to a stake by itself, and plant vines are not attached to one another and twisted together around a flexible material. Thus, *Boucher* does not teach the claimed limitation. Therefore, Applicants respectfully assert that for the above reason claim 9 is patentable over the 35 U.S.C. § 102 rejection of record.

Claims 3 and 5 depend directly from base claims 1 and 4, respectively, and thus inherit all limitations of their respective base claims. Each of the claims 3 and 5 set forth features and limitations not recited by *Boucher*. Thus, Applicants respectfully assert that for the above reasons claims 3 and 5 are patentable over the 35 U.S.C. § 102 rejection of record.

#### **IV. § 103 Rejections**

Claims 2 and 10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Boucher*. Claim 7 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Boucher* in view of *Mazura*. Claim 8 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Boucher* in view of *Tuffli*. Applicants hereby traverse these rejections.

Claim 2 depends directly from base claim 1, claims 7 and 8 depend from base claim 6, and claim 10 depends directly from base claim 9. Thus, these claims inherit all limitations of their respective base claims. Each of claims 2, 7, 8, and 10 set forth features and limitations not recited by the reference or combination of references cited in the Office Action, and accordingly should be rendered patentable over the prior art.

Further, with respect to claim 2, the Office Action also appears to have relied on legal precedent in making the rejection by stating that it would have been obvious to incorporate the step of twisting said flexible material around said growing unit in place of twisting the vines around the flexible material as a “mere reversal of the essential working parts of a device involves only routine skill in the art.” However, the Office Action does not direct Applicants to any specific legal precedent to support this rejection.

Section § 2144 of the M.P.E.P. provides that if the facts in a prior legal decision are sufficiently similar to those in an application under examination, then the examiner may use the rationale used by the court. In the case of a rearrangement or reversal of parts, the Examiner must show that the prior art “provides a motivation or reason for the worker in the art, without the benefit of appellant’s specification, to make the necessary changes in the reference device.” M.P.E.P. § 2144 (VI) (citing *Ex parte Chicago Rawhide Mfg. Co.*, 223 U.S.P.Q. 351, 353 (Bd. Pat. App. & Inter. 1984)). The Office Action has not identified the facts of a prior legal decision to support the use of legal precedent in the rejection. Further, the Office Action nor the prior art itself provide any such motivation to twist the flexible material around said growing unit. Thus, a prima facie case of obviousness has not been made with respect to claim 2, and Applicants respectfully assert that for the above reasons, claims 2, 7, 8, and 10 are patentable over the 35 U.S.C. § 103(a) rejections of record.

**V. Conclusion**

In view of the above remarks, Applicants believe the pending application is in condition for allowance. Applicants believe no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2380, under Order No. 48550/P003US/10309896 from which the undersigned is authorized to draw.

Dated: March 28, 2005

Respectfully submitted,

By 

Michael A. Papalas

Registration No.: 40,381

FULBRIGHT & JAWORSKI L.L.P.

2200 Ross Avenue, Suite 2800

Dallas, TX 75201-2784

(214) 855-8186

(214) 855-8200 (Fax)

Attorney for Applicant